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whether constitutional or statutory, are mandatory and must be strictly followed to render proceedings thereunder valid.[8]

It may be, however, that the entire amount proposed and voted may never become an actual debt; and a larger assessment, which would allow a larger indebtedness, may be complete before any obligation arises. An indebtedness can never arise in the absence of some obligation to pay.[9] Until then the relation of debtor and creditor does not exist, and there can be no legal liability.

It is argued, and correctly, that these municipal restrictions may apply to debts payable upon a future contingency.[10] Before there can be said to be any existing debt, however, the contingency must be sure to happen, regardless of any future action on the part of the municipality. If such future action is required, no debt arises until the action is had.[11] In a case of this kind, if the selling of the bonds may be regarded as a contingency, it is evident that it is a contingency requiring action, and no legal obligation arises until actual issue of the bonds.

It may be said here that in the hands of innocent holders, bonds which exceed the limit are void, *pro rata,* only to the extent of the excess.[12]

NOTICE TO AGENT AS NOTICE TO PRINCIPAL.—The rule that notice to the agent within the scope of his authority is notice to the principal, has three exceptions: 1. Where it is the agent's duty to some other principal not to disclose, as where an attorney acts for two clients.[1] 2. Where the person who claims the benefit of the notice has colluded with the agent to cheat or defraud the principal.[2] 3. Where the agent, though nominally acting as such, is really acting in his own or another's interest, and adversely to his principal.[3] This last exception, however, is qualified both on principle and by the weight of authority to the extent that even when the agent is adversely interested, yet notice to him is notice to the principal when the agent is the sole representative of the principal in that transaction, and the principal can claim only through his act. Thus where the president and the cashier of a bank discounted the note of a firm to which they belonged and fraudulently used the

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[8] State *v.* Cornwell, 40 S. C. 26, 18 S. E. 184.

[9] Quill *v.* Indianapolis, 124 Ind. 292, 23 N. E. 788; City of East St. Louis *v.* East St. Louis Gas & Coke Co., 98 Ill. 415, 38 Am. Rep. 97.

[10] Prince *v.* Quincy, 105 Ill. 138, 44 Am. Rep. 785; Spillman *v.* Parkersburg, 35 W. Va. 605, 14 S. E. 279.

[11] Burlington Water Co. *v.* Woodward, 49 Iowa 58.

[12] Schmitz *v.* Zeh, 91 Minn. 290, 97 N. W. 1049; McPherson *v.* Foster, 43 Iowa 48, 22 Am. Rep. 215; Nolan Co. *v.* Texas, 83 Tex. 182, 17 S. W. 823.

[1] Akers *v.* Rowan, 33 S. C. 451, 12 S. E. 165, 10 L. R. A. 705; Melms *v.* Pabst Brewing Co., 93 Wis. 153, 66 N. W. 518, 57 Am. St. Rep. 899.

[2] National Life Ins. Co. *v.* Minch, 53 N. Y. 144.

[3] Dillway *v.* Butler, 135 Mass. 479; Innerarity *v.* Merchants' Nat'l Bank, 139 Mass. 333, 52 Am. Rep. 710.

proceeds, the bank was held not to be a bona fide holder.[4] So where the cashier of a bank had an individual interest in a note which he knew was given without consideration, and, as cashier, discounted it, notice was imputed to the bank.[5] Similarly, where the treasurer of a town executed a note as treasurer, and himself as cashier discounted it for his own use, the bank was held bound with knowledge of the fraud.[6] This holding seems eminently sound; the principal has no channel other than the fraudulent act, through which he can claim; and when he claims the benefit of that transaction he ratifies the agency *in toto,* along with the burden of fraudulent knowledge.[7]

With regard to the time of notice, of course knowledge acquired after the termination of the agency will not be imputed to the principal; knowledge acquired during the agency and in mind contemporaneously with the transaction to be affected by it, will be imputed; knowledge acquired prior to the agency will be imputed if remembered.[8] But it will not be imputed unless proved to have been remembered.[9] It seems that, save in the clearest case, it ought to be a question of fact whether or not there is remembrance; but when the knowledge is acquired such a short time before the transaction as to make it incredible that it should be forgotten, it will be imputed as a matter of law.[10] One authority, on the contrary, holds that knowledge acquired prior to the transaction is never imputed; it must be acquired during the agency.[11]

A distinction is well made between notice officially given and knowledge casually acquired; the former is imputed if it is within the scope of the agent's authority; the latter is imputed if, at the time it is acquired, the agent is acting in a transaction to which such fact is material, or if he remembers it at some future time while acting in such a transaction.[12]

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[4] Brobston *v.* Penniman, 97 Ga. 527, 25 S. E. 350.
[5] Morris *v.* Georgia Loan, Sav. & Bkg. Co., 109 Ga. 12, 34 S. E. 378, 46 L. R. A. 506.
[6] Bank of New Mitford *v.* Town of New Mitford, 36 Conn. 93.
[7] Atlantic Mills *v.* Indian Orchard Mills, 147 Mass. 268, 17 N. E. 496, 9 Am. St. Rep. 698.
[8] The Distilled Spirits Case, 11 Wall. (U. S.) 356; Wilson *v.* Minnesota Ins. Ass'n, 36 Minn. 112, 1 Am. St. Rep. 659.
[9] Constant *v.* University, 111 N. Y. 604, 7 Am. St. Rep. 769.
[10] Brothers *v.* Bank, 84 Wis. 381, 54 N. W. 786, 36 Am. St. Rep. 932.
[11] Wheeler *v.* McGuire, 86 Ala. 398, 5 So. 190, 2 L. R. A. 808.
[12] STORY ON AGENCY, 7 ed., 160, *et seq.*